

Frequently Asked Questions:
CEQA Process for DWR Grant Programs
(Including GHG analysis for CEQA Purposes)
Revised 8/1/2012

1. **Question:** If DWR has executed a Grant Agreement for a project and has reviewed and made a determination on the CEQA document for the project, or has allowed construction to commence will DWR reopen the CEQA process?

Answer: No. Once DWR has executed a Grant Agreement and made a determination on the CEQA document for the project or allowed construction to commence, it has completed its discretionary action as a responsible agency and will not reopen the CEQA process.

2. **Question:** If a lead agency has certified an Environmental Impact Report (EIR) or adopted a Negative Declaration (ND) (whether or not a Notice of Determination has been filed) what situations could cause DWR, during its CEQA review as a responsible agency, to reopen the CEQA project review process and request additional information from the lead agency?

Answer: CEQA requires that project review be re-opened if (1) substantial changes are proposed in the project or substantial changes occur with respect to the conditions under which the project is undertaken or (2) there is new information of substantial importance, which was not known and could not have been known at the time the EIR was certified or the ND adopted regarding an impact or mitigation measure. ([CEQA Guidelines, § 15162](#))

3. **Question:** Do Greenhouse Gas (GHG) emissions fall into the category of an impact for which there is new information of substantial importance that was not known or could not have been known at the time the EIR was certified or the ND adopted by the lead agency?

Revised

Answer: No. A supplemental document is not required absent new information of substantial importance. According to recent case law, the effect of GHG emissions on the climate is not considered new information.

4. **Question:** If a supplemental document is being prepared and GHG emissions impacts were not analyzed in an EIR, does the supplemental document have to analyze GHG emission impacts?

Answer: DWR has determined that the supplemental document does not subject the entire EIR to new analysis. Project features analyzed in the original EIR that are unchanged do not need to be analyzed again. Conversely, everything that has not been evaluated in the EIR, and which will be considered in the supplemental document, must be analyzed using current standards. This

includes cumulative GHG emission impacts which must be analyzed in view of the entire project.

5. **Question:** If DWR determines that the CEQA document for the project fails to adequately address GHG emissions from the project what happens?

Answer: DWR will ask the lead agency to calculate GHG emissions from the project and determine whether the emissions are significant.

If the lead agency determines that the emissions are not significant, DWR will ask the lead agency to prepare an addendum that explains the review and determination so that it can be presented to agencies that still must exercise discretion whether or not to approve the project. An addendum can be very short and does not need to be circulated for public review but should be made available to agencies that still must exercise discretion whether or not to approve the project.

If the lead agency determines that the emissions are significant, DWR will ask that the lead agency prepare a subsequent environmental document or a supplement to the environmental document. This document must go through the same kind of analysis, notice and review as the original document and will be considered by any agency that still must exercise its decision whether or not to approve the project.

If the Lead Agency refuses to carry out the analysis and actions described above, DWR may refuse to approve the disbursement of fund for the project (or the remaining elements of the agreement).

6. **Question:** Does the CEQA document also have to address the effect of climate change on the project?

Answer: This question is currently being litigated in the courts. CEQA requires a project's potentially significant adverse impacts on the environment to be evaluated. It is DWR's position that CEQA requires an analysis of the impacts of the project and if those impacts will be affected by climate change, then CEQA requires that the changes in the impacts be analyzed. Even if not required, there is nothing in CEQA that prevents a Lead Agency from considering the effect of climate change on the project. When DWR is acting as a Lead Agency, it considers the effect of climate change on the project and recommends that other Lead Agencies do the same.

7. **Question:** The proposed project under the grant includes funding for development and completion of a CEQA document and subsequent construction of the project. How will DWR handle review of CEQA documentation in this situation?

Answer: DWR will execute a Grant Agreement with the grantee. Once DWR determines that the grantee has met all of the disbursement requirements for work on the CEQA document they can proceed with activities pursuant to completing the CEQA document for the project and will be reimbursed for costs in accordance with the Grant Agreement. Prior to beginning construction, the grantee will be required to meet a second set of disbursement requirements including submission to DWR of the completed CEQA document and all related documents and required permits. Once CEQA documentation has been completed, DWR will consider the CEQA and related documents and decide whether to continue to fund the project as described, including whether to require changes, alterations or other mitigation as part of the approved project.

Once it has approved continuing to fund the project, DWR can approve the release of funds stipulated in the Grant Agreement for construction activities.

Note: Once DWR has completed its CEQA review and made its determination on the project and all other disbursement requirements have been met, the project may go forward. However, the public has 30 days to file a legal challenge to DWR's determination and the adequacy of the underlying environmental document. Thus, DWR and the applicant face some risk that during the 30 days, someone could get a court order to stop the project and some initial cost may be lost. If there is no challenge, DWR's role as a responsible agency under CEQA is complete.

8. **Question:** Will a grantee be able to apply for reimbursement of costs in accordance with the grant agreement if the project goes forward with construction before DWR's CEQA determination has been made?

Answer: Generally no. A project that goes forward with construction prior to DWR making a determination on the project's CEQA document will not have met all of its disbursement requirements and therefore would not be able to apply for reimbursement of costs.

The information contained within this document shall not be deemed or construed as legal advice. Potential grantees seeking legal advice in response to the information contained within this document should obtain such advice from their own legal counsel.